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THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D. C. 20505

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18 October 1976

MEMORANDUM FOR: The Honorable Brent Scowcroft  
Assistant to the President for  
National Security Affairs

FROM: George Bush

SUBJECT: Restrictions on Electronic Surveillance  
in the Foreign Intelligence Field

1. Your memorandum of 13 July 1976, subject as above, requested that a thorough analysis be conducted by the Intelligence Community of the impact of Executive Order 11905 and the detailed restrictions drawn up to implement its provisions on the effective collection, dissemination and use of foreign intelligence derived from electronic intercept and surveillance techniques.

2. The attached report, prepared by the Intelligence Community Staff in concert with representatives of all affected agencies in the Community, details the impact on signals intelligence collectors, analysts and consumers. No problems were identified which would seriously impair our present ability to produce meaningful foreign signals intelligence on economic, political and military matters of significant importance to the maintenance of national security or the effective conduct of foreign policy, nor which would impair our present ability to predict foreign crises. There remain, however, several problem areas such as in the collection and analysis of economic intelligence and possibly on such subjects as intelligence related to the transfer of advanced technology to potential adversaries.

3. The most serious of the remaining problems involve SIGINT support to narcotics intelligence and protective intelligence activities, as well as the general question of intelligence support to law enforcement agencies. These and lesser problems are detailed in the report and appropriate recommendations are provided.

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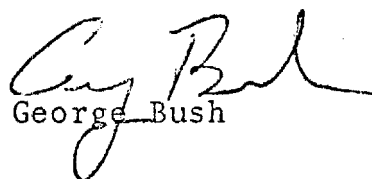
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4. This report relates solely to existing directives and guidelines for foreign intelligence-related SIGINT operations and does not consider pending legislation in the area of electronic surveillance within the United States, which is the subject of a separate, ongoing review by the Intelligence Community Staff.

5. Please also note that the study approaches the problem from the intelligence viewpoint and does not represent judgments as to the legal implications of the recommendations. I believe that such judgments should more appropriately be addressed by the NSC Staff with the Justice Department.

6. I intend to charge the Intelligence Community Staff with the responsibility of examining closely any future changes that may be issued by the Attorney General to his guidelines for the conduct of SIGINT operations and to report to me any significant impacts on the collection, dissemination and use of foreign intelligence and counterintelligence-related information.

  
George Bush

Attachment:  
As stated

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IMPACT OF EXECUTIVE ORDER 11905  
AND IMPLEMENTING GUIDELINES  
ON SIGNALS INTELLIGENCE ACTIVITIES  
OF THE UNITED STATES

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PRECIS

1. This report was prepared by the Intelligence Community Staff in response to a request from the Assistant to the President for National Security Affairs.

2. The report examines the impact of Executive Order 11905, "United States Foreign Intelligence Activities," dated 18 February 1976, and the subsequent detailed restrictions issued up by the Attorney General to implement its provisions on the effective collection, dissemination and use of foreign intelligence-related information derived from United States signals intelligence operations.

3. The report is in terms of intelligence impact alone. It reflects the inputs of the intelligence elements of the Departments of Defense, State and Treasury, the CIA, the FBI, the Drug Enforcement Administration, the United States Coast Guard, and the National Intelligence Officer for Economics. Study participants are identified in Annex G to the report.

4. No problems were identified with the Executive Order or the Attorney General's current guidelines which would seriously impair our ability to collect and disseminate meaningful foreign intelligence-related SIGINT on economic, political and military matters of significant importance to the maintenance of national security or the effective conduct of foreign policy, nor which would impair our ability to predict foreign crises. There remain, however, several problem areas such as in the collection and analysis of economic intelligence and possibly on such subjects as intelligence related to the transfer of advanced technology to potential adversaries.

6. A summary of significant problems is provided in Section I of the report along with recommendations for remedy; most of which involve the guidelines for the conduct of signals intelligence operations issued by the Attorney General.

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I. SUMMARY OF SIGNIFICANT PROBLEMS AND RECOMMENDATIONS

A. PROBLEMS:

1. The Attorney General's guidelines for the conduct of SIGINT operations are a listing of procedures to enable the lawful conduct of important signals intelligence activities. While in several areas they are essentially quite binding, in a few significant areas they tend to be less restrictive than the otherwise sweeping general restrictions of E.O. 11905. In general, however, the guidelines on the whole have a significant restrictive impact on various aspects of SIGINT production operations.

2. Significant problems include:

a. The categorization of strictly foreign intelligence signals intercept operations under the general heading of "electronic surveillance." This has the effect of placing SIGINT operations under the same severe strictures and control procedures as are applied to other more extraordinary and classic electronic penetration or eavesdropping activities. (See Section II.)

c. In certain instances, such as in the determination of what SIGINT computer selection terms pertaining to United States persons may or may not be used, the current guidelines vest in the Attorney General the responsibility for

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personally determining in each case if the information being sought constitutes significant foreign intelligence and that such information cannot be obtained by means other than "electronic surveillance." (See Section IV.)

d. The detailed Attorney General guidelines for SIGINT ILC/NDC operations contain particularly strict rules against revelation of the identities of "United States persons" noted in foreign communications and against the maintaining of computer selection terms using such names. This impedes reporting and data base maintenance, and creates administrative accountability burdens for SIGINT collectors. (See Sections IV and V.)

e. The Attorney General's expanded definition of "United States persons," to include "any other alien known to be presently in the United States," greatly enlarges the scope of "electronic surveillance" restrictions and impacts in several areas; not the least of these is the basic problem of how to determine who is or is not an alien person or entity for the purposes of foreign intelligence. (See Sections IV, V and VIII.)

f. The current guidelines permit the identification in SIGINT reports of U.S. Government officials by name. NSA, however, has opted to restrict such reporting to the identification of such officials only by title. This was done because of the concern that the use of names will cause serious problems stemming from the provisions of the Privacy Act and the Freedom of Information Act. (See Sections V, VI, and XIII.)

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h. There are restrictions on the authority of SIGINT producers to collect and provide to the Secret Service certain SIGINT information relative to United States persons who are reasonably believed to constitute a potential threat to protectees. This raises serious questions in a most important national security area. (See Section VIII.)

i. There is, in the Executive Order and the Attorney General's guidelines, a sense of prohibition against cooperation between foreign intelligence agencies and law enforcement agencies which precludes fully effective foreign intelligence support to law enforcement activities. This is especially true in the narcotics area (which itself tends to fall outside the scope of defined "foreign intelligence") and affects most severely SIGINT support to DEA, Treasury/ Customs and the Coast Guard. (See Sections IX, X and XI.)

j. Current U.S. laws and court actions, essentially the Privacy and Freedom of Information Acts and motions for disclosure claiming "electronic surveillance," tend to threaten the revelation of sensitive SIGINT sources and methods. This is caused by the absence of any general exemption for signals intelligence information and strict enjoinder against its use for evidentiary or prosecutive purposes in U.S. civil or criminal cases. (See Section XIII.)

k. Finally, there is no formal guidance relative to the conduct of "live" signals intercept training within the United States, similar to the existing procedures for the conduct of SIGINT Test and Evaluation activities. (See Section XIV.)

B. RECOMMENDATIONS:

3. It is recommended that steps be taken to:

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b. Clarify the relationship of foreign intelligence agencies with those law enforcement agencies which also have an international or non-law enforcement responsibility requiring access to foreign intelligence, under circumstances ensuring that any foreign intelligence provided will not be used in the law enforcement functions of such agencies. (See Sections I and XIII.)

c. Approve the release to the DEA and Treasury/ Customs of foreign intelligence SIGINT information of a strategic nature, i.e., that SIGINT directly related to international narcotics trafficking and other nation's policies toward illicit drug suppression. (See Section IX.)

d. Favorably consider the foreign intelligence-related information needs of the United States Coast Guard relative to the international activities of political dissidents operating from the United States against other countries and to the activities of international drug traffickers. (See Section XI.)

e. Review the feasibility of categorizing or maintaining signals intelligence information derived from foreign intelligence collection operations and entered into a data base in such a way as to be excepted, properly classified and essential national security records not within the meaning of a "system of records" under the Privacy Act. (See Section V.)

f. Review the feasibility of exempting signals intelligence information from the scope of the Freedom of Information Act and enabling negative responses to information requests or motions for discovery of "electronic surveillance" data on the grounds that such SIGINT is properly classified and essential national security information not used for evidentiary or prosecutive purposes. (See Section XIII.)

g. Where the approval of the Attorney General is required for certain SIGINT operations related to U.S. persons, the certifications of designated senior officials of United States foreign agencies that the information to be collected is important

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to the national security and not feasibly obtainable by other means should be accepted. The present procedures require personal Attorney General determination on those points. (See Sections IV and V.)

h. At least for the purpose of foreign intelligence SIGINT operations, restrict the definition of U.S. persons, as it relates to individuals, to U.S. citizens and aliens lawfully admitted for permanent residence. (See Sections IV and V.)

i. Authorize SIGINT producers to maintain their own records to aid in the identity of "U.S. persons" (individuals and corporate entities) for collection avoidance purposes only. (See Section V.)

j. Relieve SIGINT producers from the burden of detailed tabulation and reporting of the identification by title (vice names) of U.S. officials released in SIGINT product reports. (See Section V.)

k. In all cases where identification contributes to the foreign intelligence content of a report or translation, authorize SIGINT producers, exempt from Privacy Act or Freedom of Information Act provisions, to publish the names of United States Government officials noted in intercepted messages. (See Sections V and XIII.)

m. Allow the use of selection terms and names which will enable NSA to intercept and disseminate only to the Secret Service SIGINT information relevant to protective intelligence threat criteria on "U.S. persons" who are reasonably believed by the Service, and endorsed by the Attorney General, to present a danger to the safety of a

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statutory protectee of the U.S. Secret Service.  
(Note: This recommendation also assumes that recommendations e. and f. above are approved and acted upon.) (See Section VIII.)

n. The Treasury Department recommends that the provisions of Section 5(b)(7)(v) of Executive Order 11905 (relative to domestic information "however acquired" on U.S. persons) be amended or that an exception thereto be promulgated to permit all foreign intelligence agencies to collect and report to the Secret Service any information evidencing or concerning a possible threat to a statutory protectee of that Service whether or not it concerns the domestic activities of U.S. persons. (This recommendation relates to the preceeding recommendation m. but goes beyond the SIGINT ("electronic surveillance") area.) (See Section VIII.)

o. Authorize U.S. federal law enforcement agencies to disseminate to another agency information derived from all authorized sources (including electronic surveillance) if that information relates to the federal law enforcement functions of the recipient. (See Sections IX, X, and XI.)

p. Promulgate guidance relative to the conduct of "live" signals intercept training conducted within the United States. (See Section XIV.)

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